



April 1, 2024

The Honorable Rohit Chopra
Director
Consumer Financial Protection Bureau

Subject: Overdraft Fees – RIN 3170-AA42

Dear Director Chopra,

Introduction

On behalf of GoWest's 277 credit unions, spanning six states, representing \$224.4 billion in assets and nearly 17.4 million members, we are providing feedback on the CFPB's proposed rule to amend Regulations E and Z to update regulatory exceptions for overdraft credit provided by "very large" financial institutions.

In formulating this response, we have actively sought input from GoWest member credit unions through numerous channels, including each of the six state Governmental Affairs Committees (GACs), direct member communications, and one-on-one conversations. This approach ensures that these comments reflect the diverse perspectives and concerns of credit unions representing a range of asset size, geographic location, field of membership, and products and services.

The proposed Overdraft Rule is fundamentally flawed and will not only negatively impact credit unions of all sizes, but it will also cause harm to consumers by limiting their access to not-for-profit financial institutions who provide an alternative to profit driven banks and predatory lenders. Credit unions, driven and governed by their members, offer products and services that align with their mission to support financial wellness. Their not-for-profit business model returns revenue back to those members and local communities, by supporting additional branch locations, products, and services that would not be financially feasible otherwise. Make no mistake, this proposed rule, and others that treat credit unions like the largest banks in the country, will impact that model and limit the offerings to those who need them most.

The effects of this regulation will have significant adverse impacts on every credit union regardless of size, due to basic market competition. And while larger credit unions will be forced to make decisions that will negatively impact consumers, the ramifications to some small credit unions and their ability to remain competitive will be extraordinary.

Background on Credit Union Courtesy Pay and Overdraft Programs

Credit unions empower their members by offering opt-in overdraft protection services and courtesy pay programs, which help them to confidently navigate their finances, manage through unexpected events and emergencies, and do so through their trusted credit union versus seeking short-term solutions through payday lenders and other predatory options. There have been notable and important advancements in overdraft protection requirements since the passage of Dodd-Frank. Examples include the elimination of transaction ordering from high to low, the practice of debiting prior to crediting a deposit, consumer opt-in requirement and more. These were primarily large bank practices that were abusive and correctly addressed. Additionally, many credit unions have made significant voluntary changes to their overdraft policies to benefit members. Member centric changes have included eliminating overdrafts on small dollar items, limiting the number of daily overdrafts that they will charge, creating easily accessible small dollar loan programs, targeting financial education to overdraft program users about alternative options, and more.

Credit unions are cooperatives, governed by members rather than shareholders and they put people above profits. In practice this means that credit unions create products and services that members want and need, versus for-profit institutions who create products and services designed to provide financial benefits to their stockholders. This proposed rule treats a \$10 billion not-for-profit credit union the same as a \$3 trillion for-profit bank, which is illogical and not sustainable.

Unintended Consequences

As with most legislation and regulation, there will be unintended consequences from this rule. Currently, credit unions still determine service areas and branch locations based on need versus profitability. As a result, credit unions remain committed to serving rural and underserved communities and are continuing to build branches in these areas, where banks have closed branches.

This proposed rule is one of several recent and expected legislative and regulatory changes. Increased reporting requirements, limits on credit card late fees, interchange fee reduction, mortgage servicing changes, and others, in conjunction with this proposed rule, will have a cumulative impact on credit unions, who have fewer options for replacing revenue than for-profit institutions and see the harm that will come to consumers when some financial institutions simply add a checking fee or transaction fee to make up the difference. Credit unions, coupled with a challenging economy and heightened financial strain for some, will be forced to consider those and other decisions in order to maintain sufficient regulatory loss absorbing capital.

To be clear, in addition to impacts on service areas, unique programs and services, any reduction in revenue from overdraft fees would directly impact what credit unions are able to give back to their members in the form of dividends, higher savings interest rates, and lower loan costs. If this revenue stream is curtailed, credit unions may be forced to seek alternative means of generating revenue.

Examples include decreasing dividends, charging higher interest rates, decreasing interest rates earned by savers, and the introduction of new fees elsewhere. Such actions would not only diminish the benefits that members receive but also deprive them of a service that many value and rely on for managing their finances effectively. Moreover, the proposed rule ignores a subset of members who strategically employ ODP as a cost-effective alternative to traditional loans. These members often choose a single maximum overdraft with a one-time fee, viewing it as a more economical borrowing option. Existing protections, such as refunding ODP fees below certain thresholds and capping the frequency and amount of ODP usage, are already in place to prevent excessive usage and potential abuse of the system. Eliminating overdraft services will have unintended consequences, underscoring the need to carefully consider the broader impacts of regulatory changes on consumer access to affordable financial products and services.

Specific Recommendations:

Credit Unions Should be Exempted from Proposed Rule

GoWest respectfully recommends an exemption for credit unions from this rule based on several critical factors.

Only 21 credit unions fall under the purview of the proposed Overdraft Rule. This small number reflects a minuscule fraction of the entire credit union system which prides itself on serving its members with their best financial interests at heart.

The credit unions that would be affected by this rule are significantly smaller in asset size compared to the largest banking institutions. This disparity in size not only highlights the different scales of operation but also the fundamentally different roles that credit unions play in the financial lives of their members. Credit unions are member-focused and not driven by profit maximization, which often underpins the practices that the proposed rule seeks to regulate.

Even in the absence of direct regulation through the proposed Overdraft Rule, credit unions face considerable market pressure from larger financial institutions. This competitive environment naturally incentivizes credit unions to offer fair, transparent, and competitive products and services, including terms related to overdrafts. Market forces, coupled with the member-focus of credit unions, ensure that practices harmful to consumers are neither prevalent nor tolerated within the credit union sector.

Given these considerations, we believe that exempting credit unions from the proposed Overdraft Rule would not compromise consumer protection. Instead, it would recognize the unique and important position of credit unions in the financial services landscape and their unwavering commitment to serving their members' best interests. Such an exemption would allow credit unions to continue focusing on their mission of providing accessible, affordable financial services without the undue burden of regulations that are more appropriately targeted at much larger, profit-driven institutions.

Flexible Benchmark Fees and Safe Harbor Provisions

Credit unions have carefully and thoughtfully designed courtesy pay/overdraft programs implementing various safeguards to prevent potential abuses of overdraft services.

Should this rule be adopted without the above recommended exemption, many credit unions will spend significant time, money, and resources designing new programs, issuing new disclosures, and updating account agreements and other operational aspects necessary to comply. For instance, transitioning from overdrafts to overdraft lines of credit entails infrastructure changes, marketing adjustments and additional costs such as underwriting fees, all of which put smaller financial institutions at a disadvantage.

Based on the strain on money, resources, and time, **GoWest Credit Unions suggest increasing the proposed benchmark fees to a more flexible range that includes a higher threshold of \$20** to recognize economies of scale and more accurately reflect the cost of providing overdraft services for smaller covered financial institutions. Financial institutions that adopt benchmark fees should also be given a clear safe harbor in the final rule.

The \$20 recommendation originates from discussions with GoWest member credit unions who conducted comprehensive reviews of costs associated with their ODP programs. The analysis included an examination of the administrative, transactional, and support-related expenses involved in offering overdraft protection. Establishing this threshold strikes a balance between recovering costs and continuing to offer this service to their members.

Tiered Exception for Smaller Covered Financial Institutions

The CFPB must consider the uniform application of thresholds presented in this and other proposals. This approach fails to consider the substantial differences in economies of scale between large corporations like JP Morgan Chase, a 3.4 trillion-dollar entity with extensive resources and revenue streams, and smaller financial institutions who struggle to compete in the same regulatory environment. A rule that applies equally to a \$10 billion institution that is 330 times smaller than the largest bank will strain their finances, especially in the face of compounding regulations.

As written, the proposed rule includes an exception for covered entities that allow these entities to recover costs associated with Overdraft programs. The Bureau asks for comments on whether this exception should be maintained in a final rule. We strongly support maintaining the exception outlined in 1026.4(c) (3) that allows smaller covered entities to maintain programs that result in cost recovery. However, the cost and loss calculation outlined in 1026.62 (8) (2) is cumbersome.

GoWest credit unions suggests an alternative approach which involves implementing fee tiers that are proportionate to the size of the covered institution that automatically recognize the higher costs associated with offering ODP for smaller covered entities.

For example, the CFPB could create a tier for smaller covered entities between \$10B in assets and \$50B in assets. A second tier could cover institutions between \$50B and \$250B. A third tier could cover institutions between \$250B and \$1T, and a final Tier could be applied to institutions over \$1T in assets.

The per-transaction traceable cost recovery method would pose significant challenges for many smaller covered institutions. A more effective approach would involve implementing a tiered system that considers the economic realities of these institutions, allowing smaller covered entities to adjust ODP fees according to their financial capacity. This approach replaces the mandate outlined in the proposed rule where smaller covered entities must establish complex traceable cost systems. It would be more advantageous to provide them with clear and unambiguous higher benchmark fee thresholds. This adjustment not only acknowledges the unique circumstances of smaller covered institutions but also ensures their ability to continue offering essential financial services to their members without facing excessive financial strain.

Without adjustments to the approach the CFPB is taking with this and other current proposals, the direct impact and parallel contraction of the number of community-based, relationship banking financial institutions currently serving communities across the country, will be in specific correlation.

Permissibility of The Proposed Rule

GoWest members have concerns about the permissibility of the proposed Overdraft Rule. Some financial institutions offer overdraft lines of credit with interest rates and fees that correspond to rates on unsecured debt. Overdraft programs are not extensions of credit and the Bureau's inclusion of overdraft lines of credit is beyond the scope of the rulemaking. References to overdraft lines of credit should be removed from the final rule and from the commentary. In addition, the Bureau should carefully consider both the constitutionality and case law of issuing a rule that fixes prices and could result in the deprivation of property without just compensation.

Conclusion

The proposed Overdraft Rule imposes significant challenges for all credit unions, placing an overwhelming burden that could strain their operations and their ability to serve consumers effectively. As these institutions grapple with escalating costs, resource shortages, and the looming threat of essential service cuts, consumers are left vulnerable to predatory practices, exorbitant fees, and diminished access to vital financial services. It is imperative to evaluate regulatory frameworks, prioritizing fair treatment and consumer protection, while recognizing the diverse capabilities and economic realities of different-sized institutions and for-profit vs not-for-profit business models. By exploring alternative fee structures, such as tiered pricing based on institution size, and implementing flexible fee limits, there is an opportunity to mitigate some of the negative impacts on consumers and ensure equitable access to essential financial services for all members of the credit union community. As the industry adapts to regulatory changes, credit unions stand firm in their commitment to safeguarding the financial well-being of their members and upholding principles of fairness and transparency.

GoWest appreciates the opportunity to provide comments and recommends the following:

- Provide a blanket exemption for not-for-profit cooperative credit unions.
- Increase the proposed benchmark fees to include a \$20 benchmark for smaller covered financial institutions to recognize economies of scale and more accurately reflect the cost of providing overdraft services for smaller covered financial institutions.
- Consider a tiered overdraft system that reflects the economies of scale of financial institutions.
- Evaluate the legal permissibility of the proposed rule.

Respectfully,

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